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Working Party on Customs Questions affecting Transport

Ad hoc Expert Group on Phase III of the TIR Revision
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CONSIDERATIONS OF AMENDMENT PROPOSALS TO ARTICLE 11*

Transmitted by the Government of Germany

A. BACKGROUND

1. This paper contains suggestions regarding the issues laid down in document TRANS/WP.30/GE.2/2005/2 and discussed in the meeting of the Ad hoc Expert Group on 3 October 2005 in Geneva as well as suggestions regarding issues which have not been discussed so far but are nevertheless of importance. These last-mentioned issues are not only of a theoretical nature but lead to practical problems in the application of the TIR Convention, at least at the national level. As an overview these issues are:

- time limit for notification in cases of counterfeit certificates of termination
- time limit for claims for payment in cases which became subject of opposition proceedings within the administration
- too early claims for payment.

* The document is reproduced as received.

B. PROPOSALS

Article 11

1. Where a TIR operation has not been duly¹ discharged, this including cases in which the certificate of termination of the TIR operation was obtained in an improper or fraudulent manner or no termination has taken place², the competent authorities shall, without prejudice to any additional rights they may have according to their national legislation³, at least fulfil the following conditions in order to maintain⁴ their right to claim payment of the sums mentioned in Article 8, paragraph 1, from the guaranteeing association⁵:

Comment to Article 11, paragraph 1⁶

Payment of duties and taxes

The competent authorities should restrict themselves in their recourse to the guaranteeing associations to the payment of the duties and taxes evaded, applying to the portion of goods for which irregularities have been committed.

(a) **notify the holder of the TIR carnet in writing of the non-proper-discharge, ~~as soon as possible~~**⁷;

(b) **notify the guaranteeing association in writing of the non-proper-discharge, within a period of one year from the date of acceptance of the TIR Carnet by the authorities. The same provision shall apply where the certificate of termination of the TIR operation was obtained in an improper or fraudulent manner or where a counterfeit certificate of termination resulted in an unjustified discharge of the TIR operation, save that the period shall be two years;**

¹ Otherwise cases, in which a discharge is based on a fraudulently obtained certificate of termination, are not covered.

² Article 10, paragraph 2 at the end.

³ To make clear that this provision does not affect any competencies customs authorities may have, but only establishes the minimum conditions for a successful claim against the guaranteeing association.

⁴ New wording to make it possible to formulate the conditions of paragraphs (a) to (d) in the present tense.

⁵ Paragraph (d) became preamble for systematic reasons.

⁶ Former Comment to paragraph (d).

⁷ The term "as soon as possible" must be downgraded to a non-binding comment. The text of the Convention should be free of indeterminate terms. This applies even more regarding the stringent legal consequence of this specific provision (forfeiture of the right to claim payment).

Comment to Article 11, paragraphs 1 (a) and (b)

Time frame for notifications

It is recommended that the notifications of the non-discharge are made as soon as possible.⁸

Comment to Article 11, paragraph 1 (b)

~~Time limit~~ Decisive point in time⁹ for notifications

*As regards the time limit for the notification to the national guaranteeing association of the non-discharge of TIR Carnets, the date of receipt and not the date of dispatch is the decisive one. However, the method of proof of notification is left to the Customs administration concerned (registered mail, for example being one example of proof of reception). ~~If the time limit is exceeded the national guaranteeing association is not liable anymore.~~*¹⁰

(c) ~~when payment of sums mentioned in Article 8, paragraph 1, becomes due, as far as possible, require payment from the person or persons directly liable~~¹¹ transmit a claim for payment at least to the TIR Carnet holder¹² before making a claim against the guaranteeing association;

~~(d) in accordance with the provisions of paragraph 2, have the right to claim payment of the sums mentioned in Article 8, paragraph 1, from the guaranteeing association.~~¹³

~~(d) 2.~~¹⁴ make the claim for payment of the sums referred to in Article 8, paragraph 1, shall be made to the guaranteeing association at the earliest three months after the date on which the association has been notified that the operation had not been duly discharged or that the certificate of termination of the TIR operation had been obtained in an improper or fraudulent manner¹⁵ and at the latest not more than two years after that date. If the competent authorities make the claim for payment too early it will be effective only after

⁸ The term “as soon as possible” must be downgraded to a non-binding comment. The text of the Convention should be free of indeterminate terms. This applies even more regarding the stringent legal consequence of this specific provision (forfeiture of the right to claim payment).

⁹ New heading for a better distinction to the (new) previous comment.

¹⁰ The deleted last sentence of this comment is now included in the preamble of Article 11.

¹¹ First part of (c) is deleted, because it is logical that the sums will not be claimed before they are due.

¹² Integration of Explanatory Note 0.8.7 into (a) and (c), so that it can be deleted.

¹³ Paragraph (d) became preamble for systematic reasons.

¹⁴ Systematic reasons.

¹⁵ Deletion, because this is a non-proper-discharge as well.

the above mentioned period of three months.¹⁶ However, in cases which, during the above-mentioned period of two years, become the subject of **legally based administrative opposition proceedings or of court proceedings**, any claim for payment shall be made within one year of the date on which the **final decision of the competent authority or a court becomes enforceable.** **A claim that is made too early will be effective only when the decision becomes enforceable.**¹⁷

Explanatory Note to Article 11, paragraph 21 (d)

0.11-1 ~~(d)2~~ In deciding whether or not to release the goods or vehicle, Customs authorities should not, when they have other means in law of protecting the interests for which they are responsible, be influenced by the fact that the guaranteeing association is liable for the payment of duties, taxes and default interest payable by the holder of the Carnet.

The competent authorities can make good for the measures contained in paragraphs (a) to (d) above at any time within the respective time limit.

~~23.~~ **The guaranteeing association shall have a period of three months, from the date when a claim for payment is made upon it, in which to pay the amounts claimed, or to send to the competent authorities a motivated opposition to the claim for payment. The sums paid shall be reimbursed to the association if, within the two years following the date on which the claim for payment was made, it has been established to the satisfaction of the Customs authorities that no irregularity was committed in connection with the transport operation in question.**

Explanatory Note to Article 11, paragraph 23

0.11-~~32~~ If a guaranteeing association is asked, in accordance with the procedure set out in Article 11, to pay the sums referred to in Article 8, paragraph 1, and fails to do so within the time-limit of three months prescribed by the Convention, the competent authorities may rely on national regulations in requiring payment of the sums in question because what is involved in such cases is a failure to carry out a contract of guarantee entered into by the guaranteeing association under national law.

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¹⁶ It has to be made clear that making a claim too early does not abolish the respective right for all time.

¹⁷ It has to be made clear that making a claim too early does not abolish the respective right for all time.